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THE LORDS OF THE RINGS: THE ROLE OF OLYMPIC SITE SELECTION AS A WEAPON AGAINST HUMAN RIGHTS ABUSES: CHINA'S BID FOR THE 2000 OLYMPICS

PAUL MASTROCOLA*

I. INTRODUCTION

Peng Yuzhang is a seventy year-old dissident professor who was handcuffed to a wooden shackle board by Chinese authorities for three months. Four small stumps supported the board and a hole was cut out for bodily functions. Government authorities later forcibly committed Yuzhang to an asylum. In February 1993, Human Rights Watch¹ chairman Robert Bernstein sent a letter to the International Olympic Committee (IOC) describing Yuzhang's plight. Bernstein wrote, "[h]olding the Olympics in a country known for imprisonment for the mere expression of ideas and [for] torture flies in the face of the Olympic spirit." The IOC responded curtly that Bernstein's comments were "duly noted."²

China's bid to host the 2000 Summer Olympic Games in the city of Beijing was one of the most contentious Olympics site selection processes ever.³ On September 24, 1993, the IOC awarded Sydney, Australia the honor of being the host city for the 2000 Olympics by a narrow 45 to 43 vote over Beijing, China.⁴ But the Beijing 2000 controversy had prompted an international debate on the role of Olympic site selection in international affairs that the world can expect to encounter again in the selection of the host city for the 2004 Games.

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¹ America's largest human rights advocacy organization, which opposed China's bid for the 2000 Olympic Games. Bert Roughton Jr., *Chinese Bid for Games Puts IOC on the Spot*, ATLANTA J. AND CONST., June 21, 1993, at A1.

² Steve Fainaru, *Games Enhance Value; What Happens to Values?*, BOSTON SUNDAY GLOBE, Sept. 26, 1993, at 81.

³ Dave Todd, *Olympic Bid; 'Lack' of Dissidents Makes Beijing Ideal Games Site, Chinese Argue*, THE OTTAWA CITIZEN, June 22, 1993, at A1.

⁴ E.g., Maggie Farley, *China's Rights Record Couldn't Escape Olympic Considerations*, BOSTON SUNDAY GLOBE, Sept. 26, 1993, at 6.

The United States Government officially expressed its opposition to Beijing hosting the 2000 Olympics in congressional resolutions adopted in June 1993.⁵ The resolutions opposed China's bid on human rights grounds and urged the IOC to overcome its indifference to human rights abuses and to find a more suitable venue for the Games.⁶ IOC officials and others have criticized the United States' position as political interference with sports.⁷

This Note evaluates the legitimacy and appropriateness of the United States position with regard to China as expressed by the congressional resolutions of 1993. It advocates that there is authority for the Olympic Movement⁸ to use the power of international sport as leverage in the political world at the urging of a member nation. The Note argues that United States opposition to a nation's Olympic bid on human rights grounds is consistent with the Olympic ideal, and is justified by the custom of international sports law⁹ and by the historical precedent of the Olympics as a political forum. Part II provides an overview of the Olympic organization and its mission, goals, and ideal as embodied in the Olympic Charter. Part III sets out the continually developing legal framework of international sport, and shows that the Olympic Charter governs the actions of nation-states in the international sports arena. Part III also describes the authority of the Amateur Sport Act of 1978, its effect on sports disputes within the United States, and its role in defining the United States Government's options for using sports as an instrument of foreign policy. Part IV discusses the political aspect of international sport from an historical perspective and demonstrates that world politics is inherently intertwined with the Olympic system. Part V analyzes China's goals in seeking to host the Olympic Games, and addresses whether human rights abuses should preclude a nation from being an Olympic host. Finally, Part VI examines the validity of United States opposition to China's bid in terms of international sports law and custom, and concludes that the United States has authority under customary international sports law to use

⁵ S. Res. 124, 103rd Cong., 1st Sess. (1993); S. Res. 117, 103rd Cong., 1st Sess. (1993).

⁶ *Id.*

⁷ Roughton, *supra* note 1, at A1.

⁸ The Olympic Movement is the network of nongovernmental international sports organizations, primarily governed by the IOC, which programs competition among athletes and serves as a catalyst for developing international sports law. JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 2 (1988).

⁹ "International sports law" is defined as a more or less distinctive body of rules, principles, and procedures that govern the political and social consequences of transnational sport activity. *Id.* at 1.

sport for legitimate political ends with regard to China because the motivation is the pursuit of a proper human rights objective.

II. THE OLYMPIC ORGANIZATION

A. General Organization

The International Olympic System is comprised of a network of international and national sports committees and federations that work together to regulate and coordinate the Olympic Games and other regional amateur games.¹⁰ These organizations pursue a continuous program of planning, supervising, and regulating sports activity, culminating in the celebrated quadrennial competitions.¹¹ The central organ of the Olympic System is the IOC, which enforces the Olympic Charter¹² and is the supreme authority¹³ on all questions concerning the Olympic Games.¹⁴ Other components of the Olympic System include International Federations (IFs), National Olympic Committees (NOCs), the Olympic Congress, organizing committees for particular Olympiads, and national and local governments.¹⁵ These organizations function generally within the framework of the United Nations Charter and are part of the international legal system.¹⁶

B. The International Olympic Committee

The IOC is a corporate entity which owns the rights to the Olympic Games.¹⁷ The IOC is fundamentally responsible for encouraging international athletic competition and organizing a regular celebration of the Olympic Games in different locations while ensuring the

¹⁰ See Barbara O'Neill, Comment, *International Sports: Have States Succeeded Athletes as the Players?*, 6 DICK. J. INT'L L. 403, 406 (1988).

¹¹ James A.R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 489, 491 (1992) [hereinafter Nafziger, *Characteristics*].

¹² "The Olympic Charter is the codification of the Fundamental Principles, Rules, and Bye-laws adopted by the IOC. It governs the organization and operation of the Olympic Movement and stipulates the conditions for the celebration of the Olympic Games." OLYMPIC CHARTER art. I, rule 8.

¹³ OLYMPIC CHARTER art. I, rule 4. "Every person or organization that plays any part whatsoever in the Olympic Movement shall accept the supreme authority of the IOC and shall be bound by its Rules and submit to its jurisdiction." *Id.*

¹⁴ O'Neill, *supra* note 10, at 407.

¹⁵ NAFZIGER, *supra* note 8, at 25-26.

¹⁶ *Id.* at 25. The Olympic organizations are part of the Olympic system in the sense that their decisions and practices constitute customary international law that is generally followed by nation-states. *Id.* at 35.

¹⁷ O'Neill, *supra* note 10, at 407; NAFZIGER, *supra* note 8, at 26.

proper respect for and interpretation of the Olympic Charter.¹⁸ Specifically, the IOC creates and applies rules and regulations regarding all aspects of the Games, elects its own officers and committee chairs, determines the qualifications of Olympic participants, and selects sites for the Olympic Games.¹⁹ Media payments and gate receipts at the Games are its primary sources of revenue.²⁰

The IOC is a non-governmental body consisting of ninety-three individuals. The IOC body selects an individual member for each member nation.²¹ The IOC does not consider its individual members representatives of their nation-states.²² They are "ambassadors of the Olympic ideal" to their homelands.²³ The goal is to have disinterested members who remain free from any governmental or organizational ties that could influence their decisions.²⁴ IOC members are representatives *of* and not *to* the IOC.²⁵

C. Goals of the Olympic Movement

The mission of the Olympic Movement is to further the Olympic ideal in the forum of international sports competition.²⁶ The predominant articulation of this ideal and of international sport in general appears in the Olympic Charter.²⁷

The aims of the Olympic Movement are:

- to promote the development of those physical and moral qualities which are the basis of sport,
- to educate young people through sport in a spirit of better understanding between each other and of friendship, thereby helping to build a better and more peaceful world,
- to spread the Olympic principles throughout the world, thereby creating international goodwill,

¹⁸ NAFZIGER, *supra* note 8, at 19.

¹⁹ *Id.*

²⁰ *Id.* at 27. Beijing expected to bring in approximately \$1.14 billion in revenue for the 2000 Games, and earn a profit of \$120 million. Television rights alone were budgeted to bring in \$500 million in revenue. Lena H. Sun, *China Pulls Out Stops in Olympic Bid; Political Factors Dominate in Beijing Try for 2000 Games, With Chances Uncertain*, WASH. POST, July 15, 1993, at D1.

²¹ OLYMPIC CHARTER art. II, rule 12.

²² O'Neill, *supra* note 10, at 407.

²³ *Id.* (citation omitted).

²⁴ *See id.* at 407-08.

²⁵ NAFZIGER, *supra* note 8, at 26. The Olympic Charter states: "Members of the IOC are representatives of the IOC in their countries and not their delegates to the IOC." OLYMPIC CHARTER art. II, rule 12.

²⁶ *See* Jeffrey M. Marks, Note, *Political Abuse of Olympic Sport: DeFrantz v. United States Olympic Committee*, 14 N.Y.U. J. INT'L L. & POL. 155, 158-59 (1981).

²⁷ NAFZIGER, *supra* note 8, at 44.

- to bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games.²⁸

As the enforcer of the Olympic Charter, the IOC's role is to promote the underlying goals of the Olympic Movement as set out in the Charter.²⁹ Thus, all IOC decisions must be in furtherance of the Olympic ideal of seeking a better and more peaceful world.

D. *Olympic Venue Site Selection Process*

One of the most important IOC decisions is selection of the site for each Olympiad. The Olympic venue site selection process involves a detailed study, which evaluates a wide variety of factors for prospective host cities. Representatives of bidding cities submit proposals through the NOC of the nation to the IOC, and the IOC works closely with the NOCs in choosing host cities and nations.³⁰

The representatives of the bidding city must answer an IOC questionnaire in order to be considered as host for the Games.³¹ The fifty-two questions address issues such as respect for IOC rules, general and cultural information, organizational matters, and electronic media issues.³² After the IOC eliminates most cities based on their answers to the first questionnaire, the IOC examines the remaining cities in greater detail with more difficult and specific inquiries in order to narrow the pool of host contenders for the Games.³³ During this process, the IOC consults closely with the NOCs and conducts fact-finding missions to cities competing to host the Games.³⁴ Additional factors that the IOC evaluates during the process include security, tourist offerings, and political involvements of the city or state.³⁵ The IOC then prepares a report for its ninety-three individual voting members. The IOC report does not attempt to recommend or rank the host cities. Rather, the report evaluates each city on twenty-three themes, ranging from meteorological conditions to sports experience.³⁶ Although the IOC report makes no reference to human rights issues, Anita DeFrantz,

²⁸ OLYMPIC CHARTER art. I, rule 1.

²⁹ See O'Neill, *supra* note 10, at 407.

³⁰ *Id.* at 409.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ NAFZIGER, *supra* note 8, at 131.

³⁵ O'Neill, *supra* note 10, at 409.

³⁶ Janice Lloyd, *IOC Report Doesn't Bode Well For Beijing Bid as Host in 2000*, USA TODAY, July 13, 1993, at 12C.

the American member of the IOC that chose the 2000 Olympiad site, has indicated that the committee seriously considers human rights arguments.³⁷

All IOC actions inevitably project and reflect the Olympic ideal. The selection of the Olympic host site is the primary IOC decision that communicates that ideal to the world. Just the mention of an Olympic host city often conjures a vivid image. For example, a reference to Munich, Sarajevo, Berlin, or Lake Placid can each portray a unique version of the Olympic ideal. It is imperative to understand, therefore, how the Olympic organization operates and makes its decisions. Accordingly, the legal framework within which it exists must be examined.

III. THE LEGAL FRAMEWORK OF INTERNATIONAL SPORT

A. *The Olympic Charter*

Athletic competition is a fundamental human activity that has spawned a multitude of international problems when inserted into the context of rival nation-states.³⁸ As the problems multiplied and magnified throughout the years, the Olympic system formed a group of transnational sports organizations based on the Olympic Charter for the regulation of sport on an international scale.³⁹ The Olympic Charter provides a set of rules as a framework to reconcile the general practices of states with the shared goals of international sports competition.⁴⁰ Many states have deferred to the rules of the Olympic Move-

³⁷ It would be speculative to estimate just how much IOC members weigh a nation's human rights record when selecting an Olympic Games site. Although the IOC's Olympic site selection process does not expressly take the human rights record of the prospective nation into account, there are indications that human rights records influence the Committee. See Roughton, *supra* note 1, at A1. "Ms. DeFrantz said the committee takes the human rights arguments seriously. [DeFrantz commented], '[b]ut the truth is, if we begin to exclude cities solely because of complaints about human rights violations, then there would be few countries where the Games could be held - including the United States.'" *Id.* Perhaps the IOC's unenthusiastic acknowledgement of the Human Rights Watch appeal for Peng Yuzhang was more a smug response from a committee that is not receptive to outside opinion than a rejection of the human rights issue.

³⁸ See Nafziger, *Characteristics*, *supra* note 11, at 489. These international problems, described in Part IV, *infra*, occur when sports competition between individual athletes results in confrontation between nations. See RICHARD ESPY, *THE POLITICS OF THE OLYMPIC GAMES* 168 (1979).

³⁹ See ESPY, *supra* note 38, at 167.

⁴⁰ NAFZIGER, *supra* note 8, at 71. The Rules of the Olympic Charter provide the IOC with the ability to bring together citizens of the various nations of the world in the spirit of international goodwill, in spite of clashing political ideologies and individual foreign policy agendas. See ESPY, *supra* note 38, at 168.

ment to define a developing, but influential and growing body of international sports law.⁴¹

The rules of the Olympic Charter and the decisions based on it constitute international custom that governs the actions of states and other actors with regard to disputes of international legal significance in sports competition.⁴² States normally adhere to the rules and practices of the Olympic legal framework and related authority as a matter of respect and reciprocal obligation.⁴³ A government risks rebuke and isolation if it bases decisions regarding international sports disputes on principles other than those of the international system of comity and reciprocity.⁴⁴ Because custom is itself a source of international law, and the Olympic Charter best evidences custom pertaining to international sports competition, the Olympic Charter therefore sets the legal parameters for governmental action relating to the Olympic Games.⁴⁵

B. *Role of the United Nations*

As the Olympic Movement and international sport grew in interest and prestige, tension between nation-states was manifested more often on the field of play.⁴⁶ The constant challenges to the international Olympic organization of managing a worldwide amateur sports system in the context of independent nation-states (often with contrary political agendas) eventually drew the Olympics into the United Nations fold.⁴⁷ The United Nations' recognition of the Olympic Charter supports the premise that the Charter is a source of international law.⁴⁸

In 1982 the IOC adopted a Draft Declaration⁴⁹ that confirmed fundamental rules and principles of international sports law within the

⁴¹ NAFZIGER, *supra* note 8, at 35.

⁴² *Id.*

⁴³ *Id.* 34. Customary adherence to the Olympic Charter is widespread but undoubtedly not without exceptions. As Part IV of this Note explains, the modern Olympic Games are rife with various types of political disputes in which the world community has often operated outside the authority of customary international sports law. The drama of East-West boycotts and divided nation issues have been prominent in the last 25 years. See *infra* notes 91–129 and accompanying text.

⁴⁴ NAFZIGER, *supra* note 8, at 63.

⁴⁵ *Id.* at 105.

⁴⁶ ESPY, *supra* note 38, at 167.

⁴⁷ See *id.* at 168.

⁴⁸ The IOC is registered with the United Nations as a recognized international organization having legal status. *Id.* at 167. Thus, the Rules of the Olympic Charter, promulgated by the IOC, have become a source of international law. *Id.*

⁴⁹ NAFZIGER, *supra* note 8, at 135. The preamble of the Declaration expresses the desire to

United Nations framework.⁵⁰ The intent was to constrain governments by explicitly stating that the rules of the Olympic Charter constitute international law.⁵¹ The IOC selected the United Nations General Assembly rather than some other specialized forum because it recognized that there would often be political disputes related to the Olympics.⁵² In fact, the United Nations has been a primary actor in pressuring the IOC and international governments for action in several political and human rights controversies.⁵³

C. *Legal Role and Responsibilities of the International Olympic Committee*

Despite its nongovernmental status, the IOC has been vested with substantial legal authority by virtue of the Olympic Charter.⁵⁴ The IOC is "a body corporate by international law having juridical status and perpetual succession."⁵⁵ The IOC is also "the final authority on all questions concerning the Olympic Games and the Olympic Movement."⁵⁶ The rules and regulations of the IOC and United Nations authority together provide the crux of the law governing sport in the international context.⁵⁷ Being a nongovernmental organization, the IOC cannot compel governmental obedience.⁵⁸ Nevertheless, its rules and regulations best evidence current international practice and therefore have authority as customary law.⁵⁹ IOC rules are authoritative when they do not conflict with international legislation, and when they

protect competition "from the adverse consequences of international tensions." The actual Declaration provides for: 1) recognition and protection by states of the Olympic Games, 2) freedom of access for athletes and officials to Olympic sites, 3) nondiscrimination other than to further the aims of the Olympic Movement, and 4) respect by states for their National Olympic Committees. *Id.*

⁵⁰ *Id.* Although the United Nations has not formally adopted the IOC Declaration, its recognition of the IOC as an international organization having legal status confers a level of international legal authority upon the IOC. See ESPY, *supra* note 38, at 168.

⁵¹ NAFZIGER, *supra* note 8, at 135.

⁵² See *id.*

⁵³ ESPY, *supra* note 38, at 167. For example, the United Nations sought to utilize international sport to bring attention to the injustice of apartheid in South Africa. See *infra* notes 138-146 and accompanying text.

⁵⁴ Marks, *supra* note 26, at 162.

⁵⁵ OLYMPIC CHARTER art. II, rule 11.

⁵⁶ OLYMPIC CHARTER art. II, rule 23.

⁵⁷ James A.R. Nafziger & Andrew Strenk, *The Political Uses and Abuses of Sports*, 10 CONN. L. REV. 259, 279 (1978).

⁵⁸ NAFZIGER, *supra* note 8, at 34.

⁵⁹ *Id.*

perform a quasi-judicial function by implementing United Nations law.⁶⁰ Although the IOC cannot by itself generate public international law, states have recognized its autonomy as an implied delegation of governmental functions in sport.⁶¹

The IOC's record as a forum for international sports dispute resolution is mixed. Whereas legal authority of the IOC and other Olympic governing bodies has demonstrated an ability to resolve technical disputes, historically the IOC has been ineffective in utilizing international sports law to bring order to political disputes between national governments that affect their Olympic athletes.⁶² For example, events such as the United States boycott of the 1980 Moscow Olympics and the retaliatory Soviet boycott of the 1984 Los Angeles Games suggest that the international community is not wholly obedient to the IOC when political issues drive the dispute.⁶³ However, the IOC, NOCs, and IFs routinely settle non-political controversies such as "technical" issues of drug testing, eligibility, and time-keeping.⁶⁴

The IOC exercises its authority to provide for the settlement of disputes through the Court of Arbitration for Sport (CAS), established in 1983.⁶⁵ Although the subject matter jurisdiction of the CAS is limited to private sports issues rather than matters of diplomacy, it has all the powers of an international court of arbitration.⁶⁶ Its judgments are binding and as such add substantial credibility to the legal authority of the Olympic organization.⁶⁷ The competence of the CAS to settle international disputes suggests a legitimate source of principles and norms in the development of international sports law.⁶⁸

⁶⁰ Nafziger & Strenk, *supra* note 57, at 280. The role of the IOC is similar to that of the International Committee of the Red Cross, which has achieved status as a special subject of international law. *Id.*

⁶¹ Nafziger, *Characteristics*, *supra* note 11, at 494 n.19 (citation omitted).

⁶² See Michael Dockterman, *The Evolving Antarctic Legal Regime: International Sports Law*, 83 AM. J. INT'L L. 690, 693 (1988) (reviewing JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW (1988)).

⁶³ *Id.* at 692.

⁶⁴ See NAFZIGER, *supra* note 8, at 35. For example, the highly controversial issue of the eligibility of United States figure skater Tonya Harding for the 1994 Lillehammer, Norway Winter Olympics was decided within the Olympic system by the United States Figure Skating Association, the United States Olympic Committee, and ultimately the IOC.

⁶⁵ See *id.*

⁶⁶ *Id.* at 36.

⁶⁷ *Id.* "Although its jurisdiction is optional—the parties must agree in writing to submit a matter to the CAS—its judgments are binding . . . Swiss law applies unless a particular arbitration agreement provides otherwise." *Id.*

⁶⁸ *Id.* at 37.

D. *United States Acceptance of IOC Legal Authority*

The United States and many other countries have recognized the unique legal personality of the IOC and the legal importance of the Olympic Charter.⁶⁹ This recognition comes in the form of legislation and judicial opinions that formulate the general national sports policy in international relations.⁷⁰ In *Martin v. International Olympic Committee*,⁷¹ the United States Court of Appeals for the Ninth Circuit confirmed the special status of the Olympic Charter and the Olympic Games under international law.⁷² The *Martin* court stated: "The Olympic Games are organized and conducted under the terms of an international agreement—the Olympic Charter. We are extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement."⁷³

The United States Supreme Court also recognized the legitimacy of IOC legal authority in *San Francisco Arts & Athletics, Inc. v. USOC & IOC*.⁷⁴ The Supreme Court established that although the USOC is not a formal government actor, Congress officially adopted the aim of the Olympic Charter.⁷⁵ The aim described in Rule One of the Olympic Charter, adopted by the United States Government, is "to spread the Olympic principles."⁷⁶ In addition, the dissenting Justices qualified the IOC as "a highly visible and influential international body."⁷⁷

The Amateur Sport Act of 1978⁷⁸ is further evidence of acceptance by the United States of the general legal authority of the IOC. The Act

⁶⁹ *Id.* at 34.

⁷⁰ *Id.*

⁷¹ 740 F.2d 670 (9th Cir. 1984). In this case, women runners filed for injunctive relief in California state court to require organizers of the 1984 Los Angeles Summer Olympics to include certain track events for women. The women runners claimed that the failure to include these events was gender-based discrimination that violated their equal protection rights under a California state civil rights statute. The court held that the California statute did not compel separate but equal Olympic events for women, reasoning that a state statute should not be applied to alter the content of the Olympic Games. *Id.* at 677.

⁷² NAFZIGER, *supra* note 8, at 34; *see generally* Martin, 740 F.2d 670 (9th Cir. 1984).

⁷³ Martin, 740 F.2d at 677.

⁷⁴ 483 U.S. 522 (1987). The USOC and IOC brought suit under the Amateur Sports Act against a California corporation to restrain its use of the term "Olympics" to describe an athletic competition the company sponsored. The United States Supreme Court ruled for the USOC and IOC, holding that the First Amendment did not prohibit Congress's grant to the USOC of exclusive use of the word "Olympic." *Id.* at 534-35.

⁷⁵ NAFZIGER, *supra* note 8, at 34.

⁷⁶ San Francisco Arts, 483 U.S. at 537.

⁷⁷ *Id.* at 550.

⁷⁸ 36 U.S.C. §§ 371-396 (1988) [hereinafter, "Act"].

largely defines the scope and nature of involvement by the federal government in sport and establishes the United States Olympic Committee (USOC) as the instrument to manage amateur athletic activities of the United States with foreign nations.⁷⁹ The Act applies the rules and procedures of the Olympic Movement to purely domestic competition as well.⁸⁰ In defining the Government's policy options and related private options for the use of sport as an instrument of foreign policy, the Act states that the USOC shall "exercise exclusive jurisdiction . . . over all matters pertaining to the participation of the United States in the Olympic Games"⁸¹ This provision, however, cannot constrain federal action that is otherwise legitimate.⁸² Other federal statutes that involve international relations, such as the Export Administration Act of 1979⁸³ or the International Emergency Economic Powers Act,⁸⁴ may justify United States government action affecting international sport.⁸⁵

In summary, an institutional framework for the regulation of sport exists on an international scale. This framework is based on the Olympic Charter as an international agreement, sanctioned by the United Nations, and enforced by the IOC. International sports law constrains the policy options of nations maneuvering in the world political arena to the extent that they respect international custom and comity. The IOC promulgates rules and regulations that are authoritative as long as they do not conflict with international legislation.⁸⁶ Just as IOC members, who serve in a private capacity and are not national representatives, are not allowed to accept instructions from any government, neither can they compel action on the part of any government.⁸⁷ But the IOC is still of a high legal order for nongovernmental organizations. It engages in significant diplomatic activity and serves an important function in intergovernmental affairs.⁸⁸ Therefore, although the

⁷⁹ NAFZIGER, *supra* note 8, at 57; The Act specifically refers to U.S. involvement in the Olympic and Pan-American Games. 36 U.S.C. § 374(3) (1988).

⁸⁰ Nafziger, *Characteristics*, *supra* note 11, at 492.

⁸¹ 36 U.S.C. § 374(3) (1988). The Act does not define the terms "exclusive jurisdiction" or "participation." *See id.* at § 373(1)-(7).

⁸² NAFZIGER, *supra* note 8, at 58.

⁸³ 50 U.S.C. §§ 2401-20 (1976 & Supp. IV 1980).

⁸⁴ 50 U.S.C. §§ 1701-06 (Supp. IV 1980).

⁸⁵ NAFZIGER, *supra* note 8, at 126-27. President Carter invoked these laws to institute economic sanctions against the Soviet Union in response to its invasion of Afghanistan. The United States boycott of the 1980 Moscow Olympics became part of the package of sanctions justified by these statutes. *Id.*

⁸⁶ Nafziger & Strenk, *supra* note 57, at 280.

⁸⁷ Marks, *supra* note 26, at 163.

⁸⁸ Nafziger & Strenk, *supra* note 57, at 280.

nongovernmental bodies of the Olympic organization cannot alone compel government compliance, their rules, regulations, and decisions help determine state practice and best articulate a customary or autonomous sports law.⁸⁹

IV. HISTORICAL VIEW OF THE POLITICS OF INTERNATIONAL SPORT

A. General Overview

Baron Pierre de Coubertin, the father of the modern Olympic Games, envisioned international sporting events untouched by political currents.⁹⁰ The reality is that de Coubertin's idealistic vision was hopelessly inaccurate. International sports and politics are inextricably intertwined.⁹¹ The relationship between sports and politics originated with ideas of nationalism that the IOC and the individual competing states promoted and the media magnified. The Olympic system contains an inherent paradox in that the IOC rules state that the Games are contests between individuals, yet athletes represent their respective states.⁹² The result is that nationalistic fervor makes the Olympics a forum for international competition and nations historically have used the Games as tools of national foreign policy.⁹³ The international sports arena has therefore been a political arena since the time of the ancient Greeks.⁹⁴

⁸⁹ Nafziger, *Characteristics*, *supra* note 11, at 491.

⁹⁰ NAFZIGER, *supra* note 8, at 49. Baron de Coubertin created the IOC in 1896 and promoted the idea of an ambulatory quadrennial athletic competition around the world, establishing the concept of the Olympic Games as it is today. *Id.* at 19.

⁹¹ O'Neill, *supra* note 10, at 412.

⁹² *Id.* at 413.

⁹³ ESPY, *supra* note 38, at 164. Espy notes:

In this sense, organizations are individual units on the world scene. When an organization structures itself in terms of other organizational entities (e.g., international sport in terms of nation-states), the facets of other organizations (the nation-state) become a part of the first organization (international sport). Since politics is a facet of nation-states, politics becomes a part of international sport. The only way to divorce politics from international sport is to alter the organizational structure of sport. *Id.*

⁹⁴ O'Neill, *supra* note 10, at 413 n.71. "Solon, the archon of Athens in the early 6th century BC [sic], legislated a reward of 500 drachmas for every Athenian who won at the ancient Olympics in an effort to increase Athens's image." *Id.* (quoting H.A. HARRIS, GREEK ATHLETES AND ATHLETICS, noted in Leiper, *Political Problems in the Olympic Games*, in OLYMPISM, 115, 119 (J. Segrave and D. Chu eds. 1981)).

B. *The Objectives of Governmental Use of Sport in International Relations*

The legitimacy of political use of sport depends upon the objective of the intervening government. Governments use or abuse sports competition for any of at least seven objectives: propaganda, prestige, protest, conflict, cooperation, diplomatic recognition, and promotion of human rights or economic development.⁹⁵ An analysis of political disputes in the modern history of the Olympics will demonstrate that there are acceptable governmental uses of sport that are consistent with international sports law, such as to improve human rights. Because international sports law is to a large extent based on custom, historical precedent is critical to the establishment of legal custom.

1. Conflict

The use of sports by a sovereign or an individual to provoke conflict is generally illegal according to international law as expressed by the United Nations Charter.⁹⁶ Spontaneous or deliberate violent disturbances during high-visibility events such as the Olympic Games usually manifest conflict in sports. Deliberate instances of conflict in sports are normally based on propaganda.⁹⁷

The most infamous example of the political nature of sport and the violent conflicts it generates was the shocking "Black September" slaughter at the 1972 Summer Olympic Games in Munich. Palestinian terrorists infiltrated the Olympic Village, killing two Israeli athletes and taking nine hostages.⁹⁸ The police ambushed the terrorists at the airport in their attempt to leave with the hostages. During the ambush, the terrorists killed the nine athletes and the police killed three terrorists.⁹⁹ This attempt to further Palestinian objectives, particularly to gain dip-

⁹⁵ NAFZIGER, *supra* note 8, at 71.

⁹⁶ *Id.* at 71 n.1. Article 2 of the United Nations Charter provides that:

(3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

(4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations. *Id.* at 71 n.1.

⁹⁷ *See id.* at 73.

⁹⁸ *E.g.*, ESPY, *supra* note 38, at 141.

⁹⁹ *Id.*

lomatic recognition, by staging a stunning violent propaganda coup at a major sporting event, is exactly the type of political statement that the IOC desperately wants to avoid.¹⁰⁰ Fortunately, violent conflict is not a major problem in international sport because such dramatic instances are rare.¹⁰¹

Conflict in sport is more often spontaneous and not instigated by governments. For example, the rash of hooliganism and spectator rioting during European soccer matches in the mid-1980s was based in nationalistic fervor, but sovereign states did not sponsor or promote this conflict in any way.¹⁰² These examples of conflict, obviously not consistent with the Olympic ideal or in conformance with international law, demonstrate the link between nationalism, politics, and sport. They also demonstrate the weakness of legal controls (an over-reliance on comity and judicial cooperation) and the anemic diplomatic power of the IOC to avoid political conflict in sport.¹⁰³

2. Diplomatic Recognition and Nonrecognition

International law does not condone the unilateral use of sport by a nation-state to express nonrecognition of states. International sports law does encourage the peaceful use of sport to establish diplomatic relations or recognize states.¹⁰⁴ Issues of diplomatic recognition or nonrecognition have arisen whenever a governmental policy to exclude athletes of a particular nationality has conflicted with Olympic rules.¹⁰⁵

In 1976, Canada refused to grant visas to athletes from Taiwan to participate in the Montreal Olympic Games because of its more friendly political relationship with China.¹⁰⁶ Canada thereby violated Olympic rules and breached its promise as host country to admit all nations who had an IOC-approved NOC.¹⁰⁷ The customary law of the Olympic Charter prohibits discrimination by states against "any country or person on grounds of race, religion, or politics."¹⁰⁸

The case of East Germany provides an example of legitimate political use of sport for diplomatic recognition. Before the IOC for-

¹⁰⁰ See NAFZIGER, *supra* note 8, at 73.

¹⁰¹ See *id.* at 71-72.

¹⁰² Nafziger, *Characteristics*, *supra* note 11, at 496.

¹⁰³ *Id.*

¹⁰⁴ NAFZIGER, *supra* note 8, at 90.

¹⁰⁵ Nafziger, *Characteristics*, *supra* note 11, at 497.

¹⁰⁶ O'Neill, *supra* note 10, at 429-30.

¹⁰⁷ *Id.*

¹⁰⁸ OLYMPIC CHARTER art. I, rule 3.

mally recognized East Germany, NATO member countries were required to prohibit entry of East German nationals. After IOC recognition of East Germany, host nations became obligated by Rule Three of the Olympic Charter to permit East German Olympic athletes to compete.¹⁰⁹ Such waivers of visa requirements for athletes of unrecognized states under international sports law have helped to further Olympic ideals of international understanding, and have facilitated full diplomatic recognition of states.

3. Cooperation

Customary international sports law encourages the sovereign use of sports to foster international cooperation and harmony.¹¹⁰ Sports have been effectively utilized to improve strained diplomatic relations.¹¹¹ The Chinese undertook a particularly skillful diplomatic program utilizing the sport of table tennis—the so-called “ping-pong diplomacy.”¹¹² In 1971, after years of unproductive Cold War relations, the government of the People’s Republic of China invited the United States table tennis team to visit China for a competition. The government of the United States viewed the invitation as a signal of China’s desire for better relations.¹¹³ The United States government accepted the invitation and officially proposed a reciprocal visit by Chinese players. Broader diplomatic initiatives, including President Nixon’s acceptance of an invitation to visit China, and eventual exchange of diplomatic relations followed.¹¹⁴ In the case of “ping-pong diplomacy,” international sports thus helped to create an atmosphere of international goodwill, consistent with the Olympic ideal, which laid the foundation for political recognition of China by the United States and the development of diplomatic relations on a nation-state level.¹¹⁵

4. Prestige

The Olympic Games also provide a high-profile forum at which a nation can earn substantial international prestige. Success in athletic

¹⁰⁹ O’Neill, *supra* note 10, at 429. Rule 3 states: “No discrimination. . . is allowed against any country or person on grounds of race, religion or politics.” OLYMPIC CHARTER art. I, rule 3.

¹¹⁰ NAFZIGER, *supra* note 8, at 74.

¹¹¹ Nafziger & Strenk, *supra* note 57, at 276.

¹¹² O’Neill, *supra* note 10, at 415–16.

¹¹³ NAFZIGER, *supra* note 8, at 74. The Chinese ultimately succeeded in generating an immense amount of favorable global opinion in a manner that helped both countries. *Id.* at 75.

¹¹⁴ *Id.* at 74.

¹¹⁵ O’Neill, *supra* note 10, at 416.

competition at the Olympic Games is a direct and certain route to international prestige for the nation that the achieving athletes represent.¹¹⁶ Hosting the Games can potentially provide a great amount of prestige by giving the host country a unique opportunity to convey to the world favorable impressions of its tourism, economic offerings, and system of government.¹¹⁷ The IOC views the sovereign use of sports to enhance national prestige as acceptable so long as it does not result in discrimination or a triumph of nationalism over the shared goals of international competition.¹¹⁸

5. Propaganda

When an attempt to gain international prestige through sports becomes too closely linked with political ideology, it rises to the level of propaganda, and the apolitical nature of the Olympic Charter thereby prohibits it.¹¹⁹ The use of sport as an instrument of propaganda began with Hitler and Nazi Germany, culminating in the Berlin Olympics of 1936.¹²⁰ In 1932, the award of the 1936 Olympics to Berlin helped to confirm Germany's re-entry into the mainstream of international relations after World War I.¹²¹ But when Hitler took power, he converted the use of the Berlin Games from an attempt to increase national prestige to the propaganda motive of promotion of Nazi ideology and of racial and religious bias.¹²² Hitler exploited the political and public relations possibilities of the Olympics to "stir his Aryan followers to new heights of frenzied and evil patriotism."¹²³

6. Protest

International sporting events have often been used as platforms for protest or criticism of the conduct or policies of a particular government.¹²⁴ Protest may be individual or official.¹²⁵ An official protest,

¹¹⁶ Nafziger & Strenk, *supra* note 57, at 273.

¹¹⁷ *Id.* For example, by hosting the 1964 Summer Olympics, Japan gained international prestige by "show[ing] the world that it was a modern, democratic, peaceful country and that the legacy of World War II had been buried." *Id.*

¹¹⁸ NAFZIGER, *supra* note 8, at 80.

¹¹⁹ Nafziger & Strenk, *supra* note 57, at 273. "Although the categories of propaganda and prestige may overlap, propaganda is used to glorify a particular political system, whereas international prestige is more typically the culmination of a country's effort to show, for example, that it is a favorable vacation spot or economic partner." *Id.*

¹²⁰ *Id.* at 271.

¹²¹ NAFZIGER, *supra* note 8, at 21.

¹²² *Id.* at 22.

¹²³ Marks, *supra* note 26, at 161 (citation omitted).

¹²⁴ Nafziger & Strenk, *supra* note 57, at 267.

¹²⁵ NAFZIGER, *supra* note 8, at 97. At the 1968 Mexico City Olympic Games, two United States

initiated by a government, is more serious because it usually involves political issues that may spark international conflicts.¹²⁶ The legality of protests in sport depends upon the context in which it occurs, and which other uses of sport the protest invokes.¹²⁷ For instance, if the protest is based on a propaganda motive, it would be considered an illegitimate use of international sport.¹²⁸ Protest intended to enhance human rights, however, may fall within the permissible bounds of the Olympic Charter.¹²⁹

7. Human Rights

Another political use of sport is the application of the leverage of international athletic events to combat human rights problems in the international community.¹³⁰ Although the Olympic Charter prohibits discrimination against any country or person on the grounds of race, religion, or politics,¹³¹ the issue of human rights abuses presents a conflict. The conflict is "between the obligation to promote and protect human rights, which is clearly an aspiration of the Olympic Movement, and the customary rule against exclusion . . . for political reasons."¹³² The IOC has been faced with the dilemma of whether to abide by the Olympic rules in a strict sense, which would prohibit any political considerations from entering into Olympic decision-making, or to interpret the rules more liberally to evaluate human rights conditions as they relate to Olympic goals and ideals.¹³³ The growing body of international human rights law, including United Nations efforts to offer protection from human rights abuses during the 1970s, appears to have tipped the scale toward Olympic consciousness of human rights

athletes made an act of individual protest. The athletes refused to face the American flag when it was raised during the award ceremony and raised their fists in a black power salute in protest of United States government policies. *Id.*

¹²⁶ Nafziger & Strenk, *supra* note 57, at 283.

¹²⁷ See NAFZIGER, *supra* note 8, at 98.

¹²⁸ The most common form of protest is the boycott. *Id.* Most of the national boycotts of the Olympic Games have been to protest the participation in or hosting of the Games by nations of an opposing political ideology. See generally *id.* at 101-37. This is an illegitimate use of sport for propaganda purposes. See Nafziger & Strenk, *supra* note 57, at 273. For example, the multinational boycott of the 1980 Moscow Games and the Soviet boycott of the 1984 Los Angeles Games involved a clash between capitalist and communist ideologies. See NAFZIGER, *supra* note 8, at 50. The East Germans boycotted the 1952 Games to protest the IOC's refusal to recognize East Germany as a separate country, an illegitimate act of sports protest invoking the issue of diplomatic recognition. *Id.* at 101.

¹²⁹ NAFZIGER, *supra* note 8, at 98.

¹³⁰ O'Neill, *supra* note 10, at 417.

¹³¹ OLYMPIC CHARTER art. I, rule 3.

¹³² NAFZIGER, *supra* note 8, at 81.

¹³³ *Id.*

problems.¹³⁴ Because the IOC must comply with United Nations mandates and with human rights law,¹³⁵ the political use of international sports for protecting human rights is legitimate.¹³⁶

The modern history of the Olympics demonstrates that the Olympic Movement has adopted the protection of human rights as a serious issue.¹³⁷ The predominant example of the political use of sports to further human rights is the campaign to eradicate racial discrimination and apartheid in South Africa.¹³⁸ Under legal compulsion, the IOC generally excluded South African athletes from Olympic competition between 1964 and 1991.¹³⁹ The Olympic organization urged all International Federations to exclude South Africa from participation until it renounced its policy of apartheid, "which is in contravention of the Olympic Charter."¹⁴⁰ In doing so, the IOC rightly subordinated the Olympic goal of widespread international sports participation to the more fundamental principles of international human rights law.¹⁴¹

The use of international sport to effect changes in South African government policy has been relatively successful.¹⁴² The government of South Africa puts a very high value on international sports competition and therefore is particularly sensitive to IOC measures.¹⁴³ The IOC campaign against apartheid, prompted by segregation in South African sports teams,¹⁴⁴ was instrumental in compelling South Africa to aban-

¹³⁴ See Nafziger & Strenk, *supra* note 57, at 286. The IOC joined forces with the United Nations in the campaign to eradicate racial discrimination in South Africa. *Id.* at 284; *see also infra*, notes 136-45, and accompanying text. In 1975, the United Nations General Assembly adopted a resolution urging all nations to boycott New Zealand's teams in the 1976 Olympics to protest New Zealand's competition with the South African Rugby Team. Nafziger & Strenk, *supra* note 57, at 284. Such international pressures brought the battle for human rights into the forum of the Olympic Games. *Id.* at 285.

¹³⁵ NAFZIGER, *supra* note 8, at 81.

¹³⁶ Nafziger & Strenk, *supra* note 57, at 286.

¹³⁷ O'Neill, *supra* note 10, at 420.

¹³⁸ *Id.*

¹³⁹ Nafziger, *Characteristics*, *supra* note 11, at 498. The IOC helped create the International Convention against Apartheid in Sports. Significantly, the decisions of this quintessential nongovernmental organization, which was created under IOC authority, were adopted as a general practice of states. *Id.*

¹⁴⁰ NAFZIGER, *supra* note 8, at 107 (quoting 1984 Mexico City Declaration of the NOCs).

¹⁴¹ *See id.* at 108. "Apartheid and official racism violate fundamental human rights at one or another level of custom and positive law. Arguably, . . . apartheid and official racism may conflict with peremptory norms of human rights from which no derogation is permitted . . ." *Id.*

¹⁴² O'Neill, *supra* note 10, at 421.

¹⁴³ NAFZIGER, *supra* note 8, at 81. "Pressures exerted through sports competition to protect human rights in South Africa are relatively significant because of the importance traditionally attached to athletics in South Africa, whose government includes a Minister of Sport." *Id.*

¹⁴⁴ O'Neill, *supra* note 10, at 431. "Up until 1964, the South African team was limited to white athletes." *Id.*

don apartheid in the sports area.¹⁴⁵ Given the importance of sports in South African culture, it is possible that the embarrassment of ostracism contributed to the demise of apartheid in areas beyond sport.

B. *The United States Government's Use of Sports*

The United States has been one of many nations to use international sports for political motives. During the 1970s, the United States government developed a coherent foreign sports policy which became a small part of overall United States foreign policy.¹⁴⁶ In 1971, a study undertaken for the Nixon Administration recommended that the State Department actually develop a program of United States international sports activity in order to achieve foreign policy objectives.¹⁴⁷ In fact, the United States State Department administered an international athletic exchange program for coaches and athletes from 1952 to 1973, intended to promote mutual understanding through sport.¹⁴⁸ In addition, the United States boycott of the 1980 Moscow Olympic Games to protest the Soviet invasion of Afghanistan and other Soviet human rights abuses was a dramatic use of sport for political goals.¹⁴⁹

In summary, throughout the history of the Olympics, governments have effectively used sport as a diplomatic tool for political purposes. Although most uses of sport to achieve political goals have been illegitimate, good faith efforts to use sport to enhance human rights conform with international law and have been justified within the United Nations framework.¹⁵⁰ Thus, the IOC, the United Nations, and many governments historically have accepted the political employment of sport to protect human rights.¹⁵¹

V. China's Bid for the 2000 Olympic Games

A. *China's Motives*

In order to analyze the legal propriety of United States opposition to China's bid to host the 2000 Olympic Games in terms of customary

¹⁴⁵ Nafziger, *Characteristics*, *supra* note 11, at 498.

¹⁴⁶ NAFZIGER, *supra* note 8, at 53.

¹⁴⁷ James A.R. Nafziger, *Legal Aspects of a United States Foreign Sports Policy*, 8 VAND. J. TRANSNAT'L L. 837, 846 (1975) [hereinafter Nafziger, *U.S. Sports Policy*] (citation omitted).

¹⁴⁸ *Id.* at 844-45.

¹⁴⁹ See Marks, *supra* note 26, at 178. The Carter Administration's rationale for the Moscow boycott was not clearly enunciated. But there was great uneasiness in Congress over allowing the USOC to sponsor a team in Moscow, thereby making a political statement at odds with national human rights policies. *Id.*

¹⁵⁰ NAFZIGER, *supra* note 8, at 99.

¹⁵¹ See O'Neill, *supra* note 10, at 431-35.

law and historical precedent, it is important first to examine the situation in China leading to the Beijing bid. The threshold question was, did the government of China deserve to be honored by awarding Beijing the Millennium Olympic Games, and if so, were China's leaders capable of exercising a due sense of moderation in the humane treatment of the Chinese people during the Games?¹⁵² It was difficult to answer this question in the affirmative.

This is how badly China want[ed] to host the 2000 Olympics: it dispatched the air force to scatter cloud cover so it wouldn't rain on International Olympic Committee (IOC) President Juan Antonio Samaranch. It rerouted traffic to ease congestion and shut down factories to reduce pollution for another official IOC visit. And it lined up hundreds of "volunteers" along the Avenue of Heavenly Peace at midnight to practice audience enthusiasm.¹⁵³

China's basic motives for desiring to host the Olympic Games were based on the typical goal of exhibiting the nation's rich culture on the world stage as a means of gaining international prestige.¹⁵⁴ Specifically, China's leaders viewed the Olympics as a way to command world recognition of China's economic and cultural opportunities and to gain domestic acclaim at the turn of the century.¹⁵⁵ They also envisioned hosting the Olympics as a way to improve the country's image after the 1989 Tiananmen Square massacre.¹⁵⁶

There was a more fundamental reason that the Chinese leadership wanted the Games, however. The real motive was that Beijing believed that hosting the prestigious Millennium Olympics would boost the Communist Party's image at home and abroad.¹⁵⁷ Such an attempt to glorify the Communist political system would fall into the category of propaganda, an illegitimate use of international sport.¹⁵⁸

¹⁵² Graham Hutchings, *Peking Sweep History Under IOC Red Carpet*, *Graham Hutchings on How the Events of 1989 Could Still Ruin China's Bid to Host the 2000 Olympic Games*, SUNDAY TELEGRAPH, July 11, 1993, at 31.

¹⁵³ Kari Huus et al, *The Games China Plays*, NEWSWEEK, September 27, 1993 at 62.

¹⁵⁴ See Nafziger & Strenk, *supra* note 57, at 273.

¹⁵⁵ Sun, *supra* note 20, at D1.

¹⁵⁶ *Id.* The Chinese Army violently crushed a student-led pro-democracy demonstration at Tiananmen Square, Beijing. More than one thousand unarmed demonstrators and bystanders were killed and thousands wounded in the Tiananmen Square massacre. Todd, *supra* note 3, at D1.

¹⁵⁷ Hutchings, *supra* note 152, at 31.

¹⁵⁸ See Nafziger & Strenk, *supra* note 57, at 273.

B. *The Human Rights Situation in China*

A brief description of the status of human rights in China is vital to this discussion. The *United States State Department's 1992 Country Reports on Human Rights Practices* describes repressive practices by the Chinese leaders that "fall far short of internationally accepted norms"¹⁵⁹ The United States Senate resolution opposing China's Olympic bid quotes from the State Department Report that:

"torture and degrading treatment of detained and imprisoned persons persisted," . . . "conditions in all types of Chinese penal institutions are harsh and frequently degrading, . . . [and the Chinese] government still has not satisfactorily accounted for the thousands of persons throughout the country who were arrested or held in 'detention during the investigation' or 'administrative detention' status for activities related to the 1989 pro-democracy demonstrations"¹⁶⁰

China's record as one of the world's most appalling human rights abusers even arose in connection with China's own presentation to the Olympic site selection committee. The official Chinese Olympic bid touted China's ability to suppress dissent as an asset. It contained an offer that: "Neither now, nor in the future, will there emerge . . . organizations opposing Beijing's bid"¹⁶¹ Chinese authorities promised to institute a comprehensive surveillance program in 1998 to "guard 'against any possible hazard to the Games' in which 'suspects' would be put under surveillance and control."¹⁶² Such a promise to suppress any citizen who would not follow the government on the Olympic issue injected, in a very offensive tone, a human rights element into the bidding.¹⁶³ The government seemed ready and willing to resort to drastic and brutal means to make good on its promise that demonstrations would not mar the Games.¹⁶⁴ There were reports that Chinese authorities jailed without trial several dissidents who tried to persuade the IOC not to award the Games to Beijing.¹⁶⁵ Perhaps the

¹⁵⁹ S. Res. 124, 103d Cong., 1st Sess. (1993) (quoting STATE DEPARTMENT'S COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, S. Doc. No. 382, 103d Cong., 1st Sess. (1993)).

¹⁶⁰ S. Res. 117, 103d Cong., 1st Sess. (1993).

¹⁶¹ Hutchings, *supra* note 152, at 31.

¹⁶² Todd, *supra* note 3, at D1.

¹⁶³ *See id.*

¹⁶⁴ Roughton, *supra* note 1, at A1.

¹⁶⁵ Todd, *supra* note 3, at D1. The following story confirmed the suspicions of many opponents to the Beijing Olympic bid who feared that China's leaders were putting on a charade of

most telling fact regarding China's bid is that the chairman of the Beijing Olympics bid committee was Mayor Chen Xitong, the same Communist Party official who signed the martial law decree to smash the pro-democracy demonstration in Tiananmen Square on June 3-4, 1989.¹⁶⁶

C. *Arguments In Favor of Granting China Host Status*

In spite of the human rights problems, there is some merit to arguments that China's staging the Olympics would serve to establish international goodwill and would confer other benefits upon China and the world.¹⁶⁷ Chen Xitong's Olympic committee stated the argument best when it said, "We hope to combine the Olympic spirit with 5000 years' civilization of China. While carrying out reforms and opening to the outside world, China hopes to expand its exchanges with other countries to enhance mutual understanding and harmony between Eastern and Western cultures."¹⁶⁸ Supporters of the bid said that a Beijing Olympiad would boost China's economic reforms, raise national pride, and open the nation to the world.¹⁶⁹ They also argued that the Chinese people would benefit from infrastructure improvements and from huge business opportunities that the Olympics would present.¹⁷⁰ Also, some believed that holding the Games in a country known for human rights abuses would be one way to accelerate its respect for

human rights concessions leading up to the IOC site selection decision, and were not sincere about legitimate improvement:

BEIJING - In a sign that authorities are cracking down again following Beijing's losing bid for the 2000 Olympic Games, two Shanghai dissidents were tried in secret the day after the decision to award the games to Sydney. The two, Yao Kaiwen and Gao Xiaoliang, were charged with "forming a counterrevolutionary clique," and a secret hearing was held on Sept. 24, their friend Han Lifa said in a phone interview from Shanghai yesterday. The trial apparently was delayed pending the Olympic award, which went to Sydney. (AP)

New Trials Follow Failed China Bid, BOSTON GLOBE, Oct. 19, 1993, at 10.

¹⁶⁶ Todd, *supra* note 3, at D1.

¹⁶⁷ See Ian MacLeod, *Blunders That May Lose China the 2000 Games*, S. CHINA MORNING POST, June 20, 1993, at 8.

¹⁶⁸ Todd, *supra* note 3, at D1. Although this statement effectively encapsulates the "international harmony" argument, the underlying motives of the Chinese leadership are probably more focused on cleaning up its world image in the wake of the Tiananmen massacre. See Richard Dicker, *Human Rights Would Lose in a Beijing Olympiad*, INT'L HERALD TRIB., June 23, 1993; see also *supra* notes 157-59 and accompanying text.

¹⁶⁹ John Kohut, *Public's Fear of Paying for Games Restrains Enthusiasm; Mixed Hopes for Bid*, S. CHINA MORNING POST, July 12, 1993, at 8. IOC President Juan Antonio Samaranch argues that the 1988 Olympic Games in Seoul helped to change South Korea, another developing country, into a fully democratic economic power. MacLeod, *supra* note 167, at 8.

¹⁷⁰ Kohut, *supra* note 169, at 8.

human rights—the “Olympic constructive engagement” approach.¹⁷¹ The proponents of this approach acknowledged the human rights abuses but concluded that it was worth taking a chance that the prospect of praise for a successful Olympics would encourage the regime to improve human rights conditions.¹⁷²

D. *Arguments Opposing the Chinese Olympic Bid*

1. An Undeserved Stamp of Approval

Though there may have been some plausible points in favor of Beijing, it surely would have been odd, by any standard, to award the Olympics to a city whose leaders had killed hundreds of their own unarmed citizens while they were campaigning for more democracy only four years ago.¹⁷³ It is more likely that the Games would have legitimized the Chinese government and its policies by sending the signal that their human rights practices were acceptable and that the international community has forgotten, or forgiven, Tiananmen.¹⁷⁴ Holding the Olympics in China, while the government routinely imprisons and tortures peaceful political dissidents, would have conferred upon China's leaders a “stamp of approval which they clearly do not deserve,” wrote Senator Bill Bradley¹⁷⁵ in a letter to IOC President Samaranch in June, 1993.¹⁷⁶ Thus, the Olympic constructive engagement approach fails under scrutiny because even if awarding the Games to Beijing would have promoted greater economic openness, it would also have provided a stamp of approval for China's offensive human rights policies.¹⁷⁷ Historical precedent justifies this reasoning. Human rights groups observe that there was no increased respect for human rights in Mexico after the 1968 Games, nor in the Soviet Union after the 1980 Games.¹⁷⁸ In addition, the benefits that ostensibly would

¹⁷¹ See Dicker, *supra* note 168.

¹⁷² *Id.*

¹⁷³ Hutchings, *supra* note 152, at 31. The opening session of the 2000 Olympic Games would have been in the Great Hall of the People in Tiananmen Square, where the Chinese army killed hundreds of students in the 1989 pro-democracy protest. Lloyd, *supra* note 36, at 12C.

¹⁷⁴ Dicker, *supra* note 168. An IOC award of a Beijing 2000 Olympiad would have sent a message that the world no longer holds the government accountable for its actions, thereby giving China the “. . . wholly undeserved ‘acceptance’ it urgently seeks.” *Id.*

¹⁷⁵ Senator Bradley was captain of the gold medal winning United States Olympic basketball team in the 1964 Tokyo Games, and is one of the sponsors of the United States Senate resolution that opposed China's Olympic bid. See Sun, *supra* note 20, at D1.

¹⁷⁶ *Id.*

¹⁷⁷ Dicker, *supra* note 168.

¹⁷⁸ Sun, *supra* note 20, at D1.

have accrued to the Chinese people would have been offset by costly "contributions" automatically deducted from their paychecks if the government repeated the practice of the Asian Games that were held in China in 1990.¹⁷⁹

2. Comparison of China and the Former Soviet Union

Similarities exist between today's China and the former Soviet Union with respect to governmental attitudes toward international sport. The Soviets viewed success in an athletic contest against an adversary as a victory for the Soviet Government and a means of widely publicizing the Communist ideology.¹⁸⁰ This view is contrary to the Olympic ideals and is also a possible violation of international sports law and custom.¹⁸¹ The Chinese leaders, operating under a similar obsession to promote their Communist political ideology, also use international sport for improper propaganda purposes.¹⁸² It is enlightening that the Soviet Union equated its success in receiving host-nation status of the 1980 Summer Games with a political success in world recognition. The Soviet Union viewed its award by the IOC of host-nation status as an endorsement of Soviet policy.¹⁸³ Had China received the same mistaken impression as a result of being awarded the 2000 Olympics, the IOC would have lent legitimacy to China's human rights policies.

3. Symbolic Impact of the Millennium Olympic Games

The considerable symbolic impact of the Millennium Olympic Games would have magnified the impression of world endorsement of Chinese human rights practices, particularly given the worldwide media exposure. Such a major event taking place at the turn of the millennium would have resulted in exaggerated symbolic impact of the Olympic site award. The United States Senate resolution stated: "Rewarding China with the Olympic games would be the worst possible way to greet the beginning of the Third Millennium."¹⁸⁴

¹⁷⁹ *Id.* The Chinese government imposed a tax to finance the Asian Games. Residents of Beijing believed that this practice would have been repeated to finance a Beijing Olympiad. *Id.*

¹⁸⁰ O'Neill, *supra* note 10, at 427 n.167.

¹⁸¹ *Id.* Rule 9 of the Olympic Charter states that the Olympic Games are between individuals and not countries. OLYMPIC CHARTER art. I, rule 9.

¹⁸² William Safire, *Games Asians Play*, N.Y. TIMES, Sept. 20, 1990, at A21. Safire comments: "To Americans, politics is sport; to Asians, sport is politics. Beijing's authorities [were] using this event [the Asian Games] to assert their regional prestige, to unify their nation behind the goal of winning gold medals, and to expunge the memory of . . . 'events' at Tiananmen."

¹⁸³ O'Neill, *supra* note 10, at 413 n.75.

¹⁸⁴ S. Res. 117, 103d Cong., 1st Sess. (1993).

Awarding the 2000 Olympic Games to China would have constituted an undeserved endorsement of Chinese human rights policies and would have reduced any impetus China might have had to discontinue its repressive practices. Awarding the 2000 Olympics to Beijing would have squandered the international community's chance to press for substantive human rights improvements. China's government should demonstrate respect for the most basic and universal norms of human rights before the IOC bestows upon it the privilege of hosting the Olympic Games.¹⁸⁵

VI. THE LEGAL BASIS FOR UNITED STATES OPPOSITION TO CHINA HOSTING THE OLYMPIC GAMES

A *The Legal Issue*

In analyzing the legitimacy of United States opposition to the Beijing 2000 Olympic bid from the perspective of international law and historical precedent, it is important to remember that, for better or for worse, international politics and sports have always been inseparable.¹⁸⁶ The United States and the world must work within the existing political context in evaluating the propriety of a nation-state's opposition to any Olympic bid.¹⁸⁷ It has been established that political uses of sport can be legitimate or illegitimate depending on the motive.¹⁸⁸ Given the premise that the Chinese do not deserve to host the Olympic Games because China's leaders are responsible for human rights abuses and because they may be using the Games for illegitimate propaganda purposes, the issue becomes a question of law. Although United States opposition was acceptable according to historical precedent as a legitimate use of sport to enhance human rights, was such action prohibited by domestic or international sports law?

B *The United States Congressional Resolutions*

The United States Congressional resolutions of 1993 relating to the siting of the Olympics in the year 2000 were simply an expression of the United States Congress' desire and did not constitute legal

¹⁸⁵ Dicker, *supra* note 168.

¹⁸⁶ See *supra* Part IV.

¹⁸⁷ ESPY, *supra* note 38, at 171. "Too much evidence exists showing that sport and politics are indeed inseparable. This must be recognized and accepted if one is to deal with the numerous problems facing the Olympics. To deny the obvious is to court ruin." *Id.*

¹⁸⁸ See *supra* Part IV.

authority in and of themselves.¹⁸⁹ The resolutions were not even considered voting instructions for the American delegate to the IOC, much less an order to the IOC as a whole.¹⁹⁰ They were a sign of American displeasure at China's disregard for international opinion about its humanitarian practices.¹⁹¹

C *Domestic United States Law: The Amateur Sports Act*

There are no authoritative restraints under United States law on United States Government involvement in international sports to further a foreign policy objective.¹⁹² As a matter of domestic law, the President may employ amateur athletics as a tool of foreign policy under the foreign relations powers of the United States Constitution¹⁹³ or under delegated Congressional authority.¹⁹⁴ Generally, the Amateur Sports Act of 1978 defines the government's policy options.¹⁹⁵

The Amateur Sports Act of 1978 provides that the USOC, not the Federal Government, governs the conduct of amateur athletics within this country.¹⁹⁶ However, as discussed in Part III of this Note, the Act cannot constrain the Federal Government from exercising otherwise legitimate powers such as the foreign relations power. Thus, because the Act is primarily intended to govern domestic sports activity and there is no express prohibition against using the power of sports to achieve foreign policy goals, the Federal Government has authority under United States law to attempt to influence IOC decisions regarding Olympic site selection.

Some commentators argue that the legislative history of the Act demonstrates a Congressional intention to divorce sports from foreign policy.¹⁹⁷ An amendment to the bill offered by Congressman Robert F. Drinan would have prohibited the use of Government funds in support of "United States participation in amateur athletic events in nations

¹⁸⁹ A resolution by definition is not law but is simply a form in which a legislative body expresses an opinion. BLACK'S LAW DICTIONARY 1310 (6th ed. 1990).

¹⁹⁰ Rule 12 of the Olympic Charter states that members of the IOC may not accept instructions from their governments. OLYMPIC CHARTER art. I, rule 12. Anita DeFrantz, the sole American member of the IOC, stated with regard to the U.S. resolutions: "It's kind of them to offer their thoughts to me. I'll make my own decision." Roughton, *supra* note 1, at A1.

¹⁹¹ *IOC Defies Leader's Logic*, S. CHINA MORNING POST, June 22, 1993.

¹⁹² See Nafziger, *U.S. Sports Policy*, *supra* note 147, at 845.

¹⁹³ U.S. CONST. art. II, §§ 1-3.

¹⁹⁴ NAFZIGER, *supra* note 8, at 63.

¹⁹⁵ *Id.*

¹⁹⁶ Marks, *supra* note 26, at 164-65.

¹⁹⁷ *Id.* at 177.

which consistently engage in gross violations of human rights.”¹⁹⁸ Some argued that defeat of the Drinan amendment meant that Congress adopted the view that it would be inappropriate for the Government to use sports even to enhance world humanitarian conditions.¹⁹⁹ However, this interpretation lacks merit because when the bill reached the floor, there was great uneasiness during debate about allowing an independent USOC to sponsor a team in Moscow, thereby making a political statement at odds with international human rights standards.²⁰⁰ In short, the Amateur Sports Act has nothing to do with how politics and the Olympics mix.²⁰¹

D. *International Sports Law*

1. The Olympic Charter

Given that United States domestic law permits the political use of international sport, it is now necessary to focus on international law to examine further the propriety of United States opposition to China's Olympic bid. As explained in Part III of this Note, the Rules of the Olympic Charter best embody the custom of international sports law and the actions of nation-states with regard to the Chinese situation. The Olympic Charter describes the aims of the Olympic Movement as essentially the pursuit of a better and more peaceful world.²⁰² To award host status of the prestigious Millennium Olympics to such a notorious human rights abuser as China would have been in contravention of the customary law of the Olympic Charter, because it might have served to perpetuate human rights abuses that are starkly inconsistent with the Olympic ideal.²⁰³

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* It appeared that by defeating the Drinan amendment, Congress adopted the argument of shotputter Al Feuerbach. “Feuerbach felt that participation in the Olympics would not be unpatriotic and that ‘competing in a large meeting of individuals from many nations from all over the world expands the possibilities of peace and understanding, and is a patriotic act.’” *Id.*

²⁰⁰ *Id.* at 178.

²⁰¹ *Id.* Although Congressman Jack Kemp “had been trying to persuade the USOC to act within the international Olympic movement to have the Games moved from Moscow, he emphasized that the Amateur Sports Act ‘has nothing to do with the 1980 Olympic games, except to facilitate the preparation of the American athletes for participation in those games. . . .’” *Id.*

²⁰² OLYMPIC CHARTER art. I, rule 1.

²⁰³ The present state of human rights in China features arbitrary arrest and detention, forced labor, religious persecution, and prison torture. Such conditions violate minimum standards of human rights under customary international law. See, e.g., Lawrence M. Friedman, *The United States-China Act of 1991 and Customary International Law*, 13 B.C. THIRD WORLD L. J. 257, 279–80 (1993).

It would have exceeded international legal bounds for the IOC, an organization that professes high moral standards, to award the Olympic Games to a country with a human rights record as egregious as China's.²⁰⁴ IOC members are supposed to be "ambassadors of the Olympic ideal."²⁰⁵ If a prospective site nation does not live up to the standards of the Olympic ideal, as China does not, then IOC members should be consistent with their mission and vote against that nation. Thus, for the United States to urge that IOC members vote against China on human rights grounds was for the United States to urge that the IOC members fulfill their legitimate obligations, which are justified by the Olympic Charter under international law.

The Chinese argued that United States opposition to China's Olympic bid is political interference with sport that was itself a violation of the Olympic Charter.²⁰⁶ But a nation-state's use of sports for human rights motives is distinguishable legally, as well as historically,²⁰⁷ from a strictly political motive. "[A]s a matter of textual interpretation, the validity of political intervention in sports is generally acceptable when it furthers specific provisions of international law, but may be unacceptable when it does not."²⁰⁸ Under international law, actions by nation-states to combat human rights abuses are valid, whereas geopolitically motivated actions must be evaluated individually. Thus, United States action to combat human rights abuses in China is valid under international human rights law, and is therefore legal under international sports law when the motive is truly human rights oriented and not wholly politically motivated.²⁰⁹

2. Boycott Analogy

Opposition to a nation's bid for host status is similar to an international boycott in the sense that nations do not want to send their athletes to a certain country for some foreign policy reason. A boycott is not exactly the same as the China bid situation in that boycotts occur

²⁰⁴ Roughton, *supra* note 1, at A1.

²⁰⁵ O'Neill, *supra* note 10, at 407.

²⁰⁶ See Roughton, *supra* note 1, at A1. The Chinese Olympic Committee criticized the United States Congressional resolutions as "wanton interference with the just right of the Chinese people" and claimed that the resolutions "trample upon Olympic principles." *Id.* Rule 3 of the Olympic Charter prohibits discrimination against a country based on political grounds. OLYMPIC CHARTER art. I, rule 3. Rule 9 states that the Games are not intended as contests between countries, but between individuals. OLYMPIC CHARTER art. I, rule 9.

²⁰⁷ See *supra* Part IV.

²⁰⁸ NAFZIGER, *supra* note 8, at 65.

²⁰⁹ See *id.* at 117.

after the award of host status, but the legal rationale for boycotts nevertheless has some application here.

In general, a boycott is contrary to the Olympic Charter because it is a form of political interference by means of sport. It is particularly offensive because by its nature it denies athletes their right to compete.²¹⁰ A substantial body of international law and custom, however, shows that where fundamental human rights principles outweigh the right to participate in international sport, a boycott of the offending nation is not only legitimate but also is sanctioned by United Nations authority.²¹¹ Boycotts intended to combat human rights abuses are given additional legitimacy if they seek to vindicate a nearly universal consensus of the world community, as expressed by national resolutions or by United Nations pronouncements.²¹² The main criticism of boycotts is not that they are illegal or ineffective but that they deprive athletes of the chance to compete.²¹³ The right to compete is not applicable to the China situation because all athletes, including the Chinese, will still get to compete in Sydney, Australia.²¹⁴ Thus, when the United States action is motivated by human rights conditions, it cannot be invalidated under international sports law as akin to an illegal sports boycott, especially if it is sanctioned by international human rights law.²¹⁵

²¹⁰ See Marks, *supra* note 26, at 180.

²¹¹ O'Neill, *supra* note 10, at 432. This was the case concerning South Africa and its apartheid policies. NAFZIGER, *supra* note 8, at 81.

²¹² NAFZIGER, *supra* note 8, at 117.

²¹³ See Marks, *supra* note 26, at 180.

²¹⁴ There was no suggestion by the United States that it would have boycotted the 2000 Games if Beijing had won the award.

²¹⁵ There is a common perception that it was hypocritical for the United States to oppose the Chinese Olympic bid while offering China Most Favored Nation (MFN) trade status. Bert Roughton Jr., *The Atlanta Olympics, U.S. Opposition to Beijing Risky, IOC Official Says Could Lead to Boycott of '96 Games*, ATLANTA J. AND CONST., June 23, 1993, at C3. IOC Vice President Kevin Gosper noted: "It sounds as if the U.S. government is talking with two voices—one on trade and one on the Olympics." *Id.* Should the United States bring its economic and trading power to bear as well as its sports leverage in the battle against human rights abuses? With China's MFN status renewed for another year, the edge may be taken off United States sports action against China's humanitarian record. MacLeod, *supra* note 167, at 8. The answer to this apparent paradox may lie in the premise that the United States economic stake in China is far larger than its sporting stake. There is \$6 billion worth of United States investment in China, and 300 major United States companies sent letters to President Bill Clinton asking him not to withdraw MFN. *Id.* Also, the Olympic Games, unlike MFN, cannot be awarded on a conditional basis. *Id.* MFN can still be cancelled if the United States wants to send an even stronger and clearer signal to China that its human rights practices need to be brought up to acceptable standards. However, regardless of the economic stake and conditional nature of MFN, the Clinton Administration's choice of an MFN posture inconsistent with Congressional resolutions opposing the Chinese Olympic bid placed the United States foreign policy position squarely in the middle on this important human rights matter.

VII. CONCLUSION

An international legal framework exists within which the IOC applies its authority to settle disputes when international politics clash with the Olympic Games. Historical precedents of the world community using sports to protest human rights abuses contribute to the establishment of legal custom within this international framework. Such sports pressure is warranted because China probably would have misinterpreted an uncontested Olympic award as world acceptance of its poor human rights record. The government of China is particularly vulnerable to international sports pressure because, like South Africa, it places enormous importance on international sports competition and specifically on the Olympic Games. United States opposition to China's Olympic 2000 bid, as expressed by Congressional resolutions, was justified in that it followed the custom of international sports law of permitting the political use of sport to enhance human rights.

The Beijing 2000 controversy provided a lesson for the handling of future political and human rights conflicts in sports. To the extent that sport is important to the international relations policies of any nation, an attempt to persuade the IOC to deny a bid to host the Olympic Games can be legitimately and effectively used as a weapon against that nation's abuse of human rights.